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File No. 0 Govt. of India 1/41

Legal DEPARTMENT

A BRANCH

Subject:—

Opinions under the

Government of India Act,

1935

PIDE

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MHR.
25/4/1956.

DM
815156

R. I. No. 1008
31/1/41.

U. R. from the R. D. dated 31-1-41 Re: amendment of the 2nd Sch. to Pt. II of the Bombay Finance Act, 1932.

Submitted with pp.

sd/-
31/11

S. S.

The point at issue in this case is whether item (1) in the Second Schedule to Part II of the Bombay Finance Act, 1932 requires amendment in order to make it consitent with section 154-A of the Govt. of India, Act. 1935 introduced by the India and Burma (Miscellaneous Amendments) Act, 1940.

2. The view taken by the Secy. F. D. (p. 21 ante) that it does not appear necessary to undertake an amendment specifically to make the position clear as the number of officers for whom Govt. Provide free electricity must be extremely small is not correct.

3. Section 154-A of the Govt. of India Act, 19-- provides that save otherwise provides so provincial law shall impose or authorise the imposition of a tax on the consumption or sale of electricity which is consumed by the Federal Government or sold to the Federal Government for consumption by that Govt. That section came into effect, under sec. 17 of the Amending Act, from the same date as the Govt. of India act itself. It has been held by the R. L. A. that if the occupiers of the premises are entitled to a free supply of electric energy from the Central Govt. that Govt. is the consumer within the meaning of Sec. 4.(a) of the Bombay Finance Act, 1932. The proviso to sec. 5 of that

Act exempts units of energy consumed by any Govt. or the Crown Representative from the payment of the electricity duty, except to the extent specified in the Second Schedule to Part II. Item(1) in the Second Schedule to Part II exempts the Crown save in respect of premises used for residential purposes. This exemption therefore in so far as it excludes premises used for residential purposes is inconsistent with the provisions of Sec. 154-A of the G. of I Act, 1935 and therefore requires to be modified, accordingly.

sd/-
31/1.

S. N.

I agree

It is desirable that the provisions of sec. 5 and the Second Schedule to the

MRR.
25/4.

Office of the R. L. A.

The Remembrancer of Legal Affairs agrees with the view taken by Secretary, Finance Department, that it is not necessary to make the proposed amendment in item(1) in the Second Schedule to Part II of the Bombay Finance Act, 1932.

sd/-

Remembrancer of Legal Affairs.

U. R. to the F. D. No.1187 dated the 7th February, 1941.

MRR.

25/4.

R. I. No. 2071
6-3-41.

Submitted.

The question for R. L. A's consideration is whether the provisions of Sec. 32 of the Bombay Land Revenue Code, 1879, continue in force in spite of their repeal by the Govt. of India (Adoptation of Indian Laws.) order.

2. The provisions in section 32 of the Bombay Land Revenue Code 1879 which provided for the punishment of revenue officers have beenrepeated by the Govt of India (adoptation of Indian laws) order. Those provisions are notsaved by anything contained in that order, neither do they continue inforce by virtue of the provisions of Sect. 276 of the the Govt. of India Act 35 as under that section only the rules made under the ~~the~~ Govt. of India. Act are saved. The view taken in para 1, of the R. D. note a.i p. 7 ante is correct.

Sd/-
24/3
S. A. S.

sd/-
24/3
D. S.

sd/-
25/3
R. L. A.

sd/-
31/3

U.R. to R. D. No. 2079 dated 2/4/1941.

MRR.
25/4.

RINo. 1917
25/2/1941.

Office of the R.L.A

The question for consideration of the Remembrancer of Legal Affairs is whether the Bombay Shops and Establishments Act, 1939, applies to establishmtns of the Federal Railways.

2. The Bombay Shops and Establishments Act, 1939, containks provisions which inter alia prescribe the monthly and daily hours of work and commercial establishments and also the holidays to which persons employed insuch establishments are entitled (see Chapter III of the Act.) These provisions are in respect of a matter falling within the Concurrent Legislative field (entry 27 in List III) and are therefore within the competence of the Provincial Legislature. The question is whether these provisions would apply to employees of the Federal Railways. Federal Railways is a Federal subject (see entry 20 in List I) and any legislation aimed specially at the relation between Federal Railways and their employees would be within the Federal competence and not Provincial. (Clements' Canadian Constitution, P. 466. Grand Trunk Railway vs. Attorney General of Canada(1907) A. C. 65). Chapter VI-A of the Indian Railways Act, 1890, contains special provisions as to the hours of work and rest of railwasy servants. These provisions in so far as they relate to Federal Railways employees are within the legislative competence of the Central Legislature and would according to the principle enunciated in the case of Grand trunk Railways vs. the Attorney General of Canada prevail over the provisions of the Bombay shops and Establishments, Act. Inthecabove case Lord Dunedin has observed; "First, there can be a domain inwhich case neither legislation will be ultra vires, if the field is clear; andsecondly, that if the field is not clear, and in such a domain the two legislation meet, then the Dominion legislation must prevail." The conclusion therefore is that the Bombay Shops and Establishments Act would not apply to the employees of the Federal Railways.

sd/- 18/4.
Remembrancer of Legal Affairs.

MRR. 25/4.

U. R. to the P. & s. D. No. 3468 datedthe 21st April 41

GOVERNMENT OF INDIA
RAILWAY DEPARTMENT.
(Railway Board)

....

No. 0552. -F

New Delhi, dated the 31st March, 1941.
1st April

The secretary to the Government of Bombay,
General Department.

Sir,

Municipal taxation of Railway properties.

I am directed to forward a copy of the Agent and General Manager Bombay, Baroda and Central India Railwayx's letter to the Railway Board No. E2308/B, dated the 30th January 1941, together with a copy of letter from the commissioner Northern Division to the Agent and General Manager Bombay, Baroda and Central India Railway, No. M. U. N. A. 436 dated the 5th December 1940, on the above noted subject. The opinion ascribed to the Government of India in para. 1 of the Comissioner's letter is not quite in accord with the viewsin fact held by them which are as follows:-

2. Under clause(2) of section 135 of the Indian Railways Act, 1890, the Railway Administration is liable to pay either:-

(1) the tax which it has been declared under clause(1) to be liable to pay or
(2) in liew of that tax the sum determined by an officer appointed in this behalf,

and it follows that, for so long as the liability to pay the tax continues to be saved by the proviso to section 154 (i. e. for so long asthe tax which the Railway Administration was, immediately before the commencement of Part III of the Government of India Act, 1935, liable to pay in xxxxxx respect of any crown property then inexistance remains in force and the Central Legislature does not intervene) the alternative liability to pay the sum determined in lieu of the tax also remains in operation.

I am accordingly to request that, if the Government of Bombay have no objection, the Commissioner, Northern Division may be advised accordingly.

I have the honour to be,
Sir,
Your most obedient servant,

sd/-

Secretary, Railway Board.

D. A. As referred

MRR.
25/4.

Copy of letter No. E23C8/B dated the 30th January, 1941 from the Agent & General Manager, Bombay, Baroda and Central India Railway to the Secretary, Railway Board, New Delhi.

In connection with municpal taxation on Railway properties At Ahmedabad, the Commissioner, Northern Division, was asked by this Administration to fix a fair and reasonable sum in lieu of Water Tax payable to the Ahmedabad Municipality for the year 1939-40, as a result of the Municipality attempting to increase the assessment on Railway property to what was considered to be an unreasonable figure. The Commissioner, Northern Division, inhis reply, states that he has been advised that the Government of India have definitely opined that no additional tax can be levied on State owned Railways in view of the proviso to Section 154 of the Government of India Act, 1935, and that it makes no difference if the addition arises on account of a new form of tax or an enhanced rate, or a variation in theassessment process or the application of the tax to an enlargd area or to parcels of property. A copy of the Commissioner's letter No. M. U. N. A. 436 dated 5th December 1940, in which this opinion is expressed, is enclosed for information. If the opinion given to the Commissioner, Northern Division by the overnment of India is correct, it would seem that this Administration could not be compelled to pay to the Bombay municipality anything more on account of General and Halalkhore taxes than was awarded by Mr. W. R. Tennant, viz. Rs. 1, 80, 000/- p. a. Vide Railway Board's Letter No. 079-F dated 29th March 1937 and that the award made by Sir Raghavendra Rau for the year 1939-40 and subsequent years, vide Railways Board's letter No. 079-F dated 17th April 1940, would be rendered null and void.

I should be glad to have your opinion inthis matter.

MRR.

25/4.

Copy of letter No. M. U. N. A. 436 dated the 5th December 1940 from the Commissioner, Nrothern Division, to the Agent and General Manager, B. B. & C. I. Railway Bombay.

;;;;;;;;;;

Municipal Taxation on Railway properties at Ahmedabad.

With reference to your No. E23C2/26 dated 1-10-40 and in continuation of this office No. M. U. N. A. 436 dated 25-1-40. I have the honour to state that in view of the provisions of section154 of the Government of India Act, 1935, the question of Municipal Taxation of Railway properties was referred to Government and I have been advised that the Government of India have definitely opined that no additional tax can be levied on State-owned Railways in view of the proviso to section 154 of the overnment of India Act, 1935, and that it makes no difference if the addition arises on account of anew form of tax or an enhanced rate, or a variation in the assessment process or the application of the tax to an enlarged area or to parcels of property. I have accordingly apprised the Ahmedabad Municipality of the view of the Government of India in the matter that section154 of the Government of India Act, 1935, prevents a local authority from imposing a greater amount or raising the incidence of any existing taxation upon a state owned Railway administration and have advised that body not to enhande the tax levied by it on Railway properties within its limits beyond what it was levying immediately before the commencement of Part III of the said Act, i. e. 31-3-37.

2. I have also beenadvised that the determination by me of a fair and resonable sum under section 135(2) of the Indian Railways Act, 1890, is likely, in certaing cases, to conflict with the above view of the law; for although the sum fixed by me may be smaller than the increased tax it need not necessarily be lower than the amount of the tax as it exists. The action of the Municipality and my proposed action under section 135(2) would run counter in principal to the legal position indicated above and I have been advised not to encourag either. I have therefore to inform you that I do not propose to take action under section 135(2)

of the Indian Railways Act, 1890, in view of the uncertainty as to how far such action could survive the overriding provision of section 154 of the Government of India Act, 1935.

MRR.

25/4

Submitted.

It appears that the Ahmedabad Muni-pality has levied assessment on certain Railway properties at rates higher than tho-se prevailing immediately before 1-4-37 as a result of which the amount of the water tax payable in respect of those pro-rerties as increase. The Commr. N. D. who was asked by the Railway Administration to fix a fair and reasonable sum in lieu of the water tax under section 135(2) of the Railways Act, 1890 declined to do so on the ground that the muny had no power to increase therate of taxation. The Govt. of India (Rly. Deppt) to whom the point was referrred intheir letter dated 1. 4. 41. at p. 1 ante say as follows:-

"Under clause(2) of section135 of the Indian Railways Act, 1890, the Railway Administration is liable to pay either:

(1) the tax which it has been declared under clause (1) to be liable to pay, or

(2) in lieu of that tax thesum determin-ed by an officer appointed in this behalf and it follows, that; forso longas the liabi-lity to pay the tax continues to be saved by the proviso to section 154(i. e. for so long as the tax which the Railway Adminis-stration was, immediately before the comm-encement of part III of the Government of India, Act, 1935, liable to pay in respect of any crown.

property then inexistance remains in force and
the Central Legislature does not intervene)
the alternative liability to pay the sum determ-
ined in lieu of the tax also remains in operation."

2. In view of para 3 of the Adv. General's opinion No. 21 dt. 20/6/40, the G. D. proposes to inform The Govt. of India on the lines of para. 3 of Dy. Secy. G. D.'s note dated 8.4.41. The H. L. A. is requested to advise before a letter is sent to the Govt. of India as proposed.

3. It is no doubt true as stated inthe note of D. S. G. D. the letter of the Govt. of India is vaguely worded. It does not definitely state whether under the proviso to sect. 154 of the Govt. of India Act, 1935 it is permissible to levy a tax on the property belonging to the Central Govt. at higher rates than those obtaining on 31st march 1937. Before taking any further action it would be desirable to ask the Govt. of India in the first instance to make the position clear. If the Govt. of India are of the opinion that the power conferred by the proviso to sect. 154 to continue to levy tad ason the property belonging to the Central Govt. includes the power to levy those taxes at higher rates, such a rulingwill ubdoubtedly be in the interests of the Province and may be acquiesced inwithout demur.

sd/-
23/4. S. A. F

Perhaps the reply may be on the law's if A-A above

sd/-
20/4

D. S.

MM.
23/4.

~~Officiating~~

Office of the R. L. A.

It is no doubt true that as stated by Deputy Secretary, G. D. the Government of India's letter 1st April 1941 at pages 1-2 ante is vaguely worded, but as in that letter they say that the opinion ascribed to them in paragraph 1 of the Commissioner's letter at p. 5 ante, which seems to be based on R. L. A's opinion No. 10073, dated the 16th November 1940, is not in accord with the view held by them, it may be fairly assumed that they are of the opinion that under the proviso to section 154 of the Government of India Act, 1935, it is open to the Municipality to levy a tax on the property belonging to the Central Government at a rate higher than that obtaining on 31st March 1937.

Although this view is not quite free from doubt, as stated by the Remembrancer of Legal Affairs in his opinion No. 10073, dated the 16th November, 1940, it is infavour of the Province and should therefore be followed until it is held to be wrong by the Courts. The ~~Senior~~ Commissioner should therefore be asked to take action under section 135(2) of the Indian Railways Act ~~of~~ 1890, and fix a fair and reasonable sum in lieu of the tax payable by the Railway Administration.

sd/-
13/5

Remembrancer of Legal Affairs.

U. R. to the G. D. No. 4424 dated the 14th May 1941.

MRR.

26/4.

Submitted.

The old Railway Yard of the M. & S. M. Railway measruing 12.12 acres, situated within the limits of the Sholapur Borough Municipality was liable to pay the tax of Rs. 144/- which was assessed on the basis of of the vluation of the land at the rate of Rs. 4400/- per acre with effect from 1930 till 1939. With his letter No. 5186, dated 17.10.1939, however, the Chief Officer despatched a notice under section 82(1) of the Bombay Municipal Boaroughs Act, 1925, to the Agent and General Manager, M. & S. M. Railway informing the latter about his intention to increase the valuation of the property from Rs. 4400/- to Rs. 19360/- per acre and requesting him to submit his objections, if any within the time stipulated in the notice. As a result of theincrease in the valuation, the M. & S. M. Railway is liable to pay the enhanced tax of Rs. 477-8-0. It appears that under section 82(2) read with section 81 (2), the "Vasuli Committee" heard the objections of the M. & S. M. Railway and confirmed the valuation fixed by the Chief Officer It appears that though the tax in respect of thesaid land for each of the years 1937-38 and 1938-39 was already paid by the Railway Administration the Chief Officer, Sholapur Municipality, claimed the tax at theenhanced rate of Rs. 477-8-0 per annum for each of three years 1937-38, 1938-39 and 1939-40. The Railway Administration contends that

the valuation fixed by the Collr. in respect of an adjoining plot of land, is very high, andit, therefore preferredand appeal to the Commr. C. D. under section 135(2) of the Indian Railways Act, 1890, requesting him to fix a fair andreasonable tax to be paid by the Railway.

2. - It appears that in the meanwhile the Chief Officer claimed Rs. 1000-8-0 representing the difference between thetax paid during the past three years at the rate of Rs. 144/- and that payavle at th enhanced rate of Rs. 477-8-0 as fixed by the Municipality in 1939. The M. & S. M. Railway contended that under section 82(3) of the Bombay Municipal Boroughs Act, 1925, the alteration in the entry could only take effect from the earliest day in the current official year on whichthecircumstances justifying the alteration existed. Inhis letter No. 143, dated 5.4.40, the Chief Officer, hwever, stated that the circumstances justifying the alteration in the assessment list existed on 1.4.37 and thereafter andas such the Municipality was justified inrecovering the tax at the enhanced rate of assessment from that date. Inview of this, the Railway Administration paid up the amount claimed under protest.

3. The question for the R. L. A's consideraxxtion is whether the view of the Collr. of Sholapur that the Municipality can recover theenh nced tax with effect from 1.4.39 i.e. from the earliest date in the official year of 1939, and not retrospectively with effect from 1.4.37 is correct.

4. Section 82(1) of the Bombay Municipal Boroughs Act, 1925, authorises the Standing Committee, at any time, to alter the assessment list by inserting or altering an entry in respect of any property, such entry having been omitted from or erroneously made

in the assessment list throughfraud, accident or mistake, or in respect of any building constructed, altered, added to or reconstructed in whole or in part, where such construction. alteration, addition or reconstruction, alteration, addition or reconstruction had been completed after the preparation of the assessment list. It is clear that under section 82(1) of the Act, the amendment of theassessment list . ~~It is clear that under section 82(1) of the Act, the amendment~~ is to be made only when an entry in respect of a property is erroneously made inthe assessment list through fraud, a accident or mistake, or when the building concerned is constructed, altered, added to or reconstructed after the preparation of the assessment list. No question of construction, alteration or addition to a building subsequent to the preparation of the assessment list is involved inthis case.
The Chief Officer states that the Valuation of the land was found to have been erroneously calculated as compared with the valuation of the surrounding lands. A From the letter of the Agent and General Manager, No. M-1737/28/238, dated 31/5/1930, it will be clear that the land was assessed to the house-tax on the basis of the valuation of Rs 4400/- per acre (with effect from 1930) and that this valuation was adopted by the "Vasuli Committee after a reference to the Revenue Authorities.

A There is, therefore no question of error or account or fraud, accident or mistake as the Commr. thinks The assessment ~~xxxx xxx~~ therefore, cannot be altered under Sect. 82~~x~~(1) during the official year (1939-40) until the assessment list was revised under section 34 of the Act for the following year. (Vide Para 3 of R. L. A's opinion No. O. Munis. Cities 23/29 dated 4.7.1929)

5. In view of the legal aspect of the case stated above, the questions~~x~~ of recovering the house-tax for the previous years 1937-38 and 1938-39 does not survive. It may, however, be stated that under section 82(3) of the Municipal Boroughs Act, 1925, the alteration of an entry inthe assessment list has the same

MRR.

26/4

Office of the R. L. A.

It appears that the M. & S. M. Railway is a state-owned Federal Railway. As pointed out in R. L. A's opinion No. 10073 dated the the 16th November, 1940, the competence of a local authority to impose and increase a tax against the State-owned Federal Railway is not free from doubt. It appears to be view of the Government of India that where any property vested in His Majesty under section 154 of the Government of India Act was not liable to a tax payable to a local authority before the 31st March 1937, the local authority may not be competent to levy a tax on the property. In this view, the area of about 68 acres referred to in the Railway Agent's letter at pages 51-52, which is being assessed to a municipal tax for the first time on account of the area being included within the recently extended limits of the Sholapur Municipality, will not be subject to the tax imposed. The proper course in circumstances would be to take action analogous to that indicated in para 4 of the opinion referred to above.

2. As regards the area of 12.12 acres referred to in the Railway Agent's letter at page 13, this area was previously liable to the Sholapur Municipal tax and the question now is one of enhancing that tax and the question now is one of enhancing that tax. It would appear from R. L. A's opinion No. 4424 dated the 14th May 1941, that in such a case the view of the Government of India as now inferred is that it is competent for the Commissioner to take action under section 135(2) of the Indian Railways Act, 1890 and fix a fair and reasonable sum in view of the tax payable by the Railway administration. The Commissioner should, therefore, be asked to take such action with reference to para.5 of the Railway Agent's letter at page 13.

3. In fixing the tax it will be for the Commissioner to find on facts whether the Municipality's claim to enhance assessment is based on the ground of mistake under section 82 or on a revesion of valuation under section 84.

In the former case, the tax becomes due from the current official year of the alteration(see section 82(3)) and in the latter case from the year immediately following (see section 84(1)); the tax will not be leviable retrospectively for years prior to the alteration in either case.

sd/-

Remembrancer of Legal Affairs,

U. R. To G. D. 5007, dated the 31st May 1941.

mmt.
26/4.

Submitted.

The Secy. to Govt., R. D., Sind, has requested for information on the following questions:-

(1) what is the interpretation of the expression "revenue case" in Sec. 296 (2) of the Govt of India Act, 1935;

(2) has the term"revenue case" been limited to cases relating to or concerning the revenues of the province or conerning any act ordered or done in the collection thereof. and

(3) has the expression been extended to appeals and revision application against all orders of subordinate revenue officers?

As regards questions(1) and (2) above, the R. D. propose to forward a copy of R. L. A's opinion dated 27th November 1937 (without the preamble) to the Sind Govt. As regards the third question, the R. D. propose to inform the Sind Govt that the Bombay Rev. Tribunal has jurisidiction to entertain appeals and revise decisions in all revenue cases arising under the provisions of the enactments specified inthe Schedule to the Bom.Rev. Tribunal Act, 1939, in respect of which such jurisdiction was vested in theBombay Govt immediately before 1st April 1937. The R. L. A. is requested to state whether there is any objection to a copy of the opinion dated 27th Nov. 1937 (without the preamble) being forwarded to the Govt of Sind.

2. The R. D. may be informed that there is no objection to a copy of the opinion dated

27th Nov. 1937 (without the preamble) being forwarded to the Sind Government.

sd/-
4/6

A L R As in para 3 of Mr. Deshmukh's note.

sd/-
5/6

R L A sd/-
6/6

U. R. to H. D. No. 5237 dated 10-6-1911.

mm.

26/A

Submitted.

The question for the consideration of the R. L. A. is whether the Provl. Govt. can recover from the administration of G. I. P. Ry. a sum of Rs. 8609 onaccount of the building grant paid in respect of the Railway School at Igatpuri as the school building appears to have been used for a purpose other than an educational purpose. The facts of the reference are that in 1924 a sum of Rs. 8715 was paid to the G. I. P. Ry. as a building grant on the terms and conditions embodied in the Memo. of Conditions dated 18-4-28 Condition No. 4 provides that all the premises and buildings will be used as and for the purposes of a Railway school to be devoted wholly to education and in part to secular education. Condition 5 provides that the school will be managed and conducted in all respects in accordance with the rules and regulations for the time being in force of the Educational Deptt. in Bombay. It appears that the school was closed with effect from 18-12-36. Under regulation 60 of the code of Regulations for European Schools inthe Bombay presy. if any building towards the erection of which a grant has been made by Govt. is subsequently directed to other than educational pruposes the Govt. shall have a prior lien upon the building for the recovery of thegrant. Under theNote to that Regulation if the School is closed through no default of the managers a depriciation in the value of the building can be considered for the purpose of recovering back the amount.

In this case no trust deed has been executed; and the only terms of the grant have been incorporated in the Memo. of Conditions. The General Manager of the G. I. P. Ry. in this Letter at p. 75 ante states that he has been advised by the Railway Board that the Memo. of Conditions of 1928 read with Regulation 60 amounts to a mortgge; and that as inthe year 1928 the Govt. of Bombay and the Central Govt. owning the G. I. P. Ryk were not different legal entities, no legal rights could have been created between them and consequently no refund is payable by the Railway Administration.

2. The contention of the G. I. P. Ry. Admin. that no refund is payable by them does not appear to be correct The grant was paid by one Deptt. of Govt. to another on the conditions embodied in the Memo. of 1928. No formal deed was executed as both the parties the grantor and the grantee would have been the same viz. the Secy. of State for India. Now that the position is different the Central ~~Govt~~ Govt. as the owner of the G. I. P. Ry. is bound to refund the money which was paid to the Ry. Admin. on the said conditions and the rules of the Educational Deptt. Even if it is admitted that the contention now put forth on behalf of the Ry. is correct,it

MRR.
26/4.

Office of the R. L. A.

Before Part III of the Government of India Act, 1935, came into force, the Central Government and the Provincial Governments were not different legal entities. Consequently the grant of Rs. 8, 716 made in 1934 by the Government of Bombay to the G. I. P. Railway which was owned by the Central Government was only in the nature of a grant made to a Department of the Government. For this reason no trust deed was executed inthis case as both the parties, the Grantor and the Grantee would have been the same viz., the Secretary of State for India in Council.
As no trust deed has been executed it will not be possible to recover theamount given to the Railway Administration as a grant for the School by recourse to a Court of law.

2. There is however no doubt that the Government of Bombay has a good claim to refund of the amount of the grant. Condition 4 of the Memo. of Conditions signed by the Agent, G. I. P. Railwayand Mon. Secretary, Railway School Board, in consideration of the building grant given by the Government states that all the premises andbuildings will be used as and for the purposes of a Railway School to be devoted wholly to education and in part to secular education. It is admitted that the building is no longer used for the purposes, of the School. The Railway Administration is, therefore, bound, at least in equity, to refund the grant made to it by Government. This is also in a way admitted by the Railway Board when it states that the Memo. or Conditions, readx with clauses 60 of the Code of Regulations for European Schools, amounts to a mortgage(p.70) It may be also be pointed out that although the Government of India and the Provincial Governments were not different legal entities, the financial relations betweenthem were conducted as if they were different legal entites. They had separate budgets and maintained separate accounts. If the Government of Bombay incurred any expenditure on behalf

of Government of India, it was recovered from that Government The Railway Administration is therefore not justified in refusing to refund theamount of grant on the more technical ground that the Government of Bombay cannot now institute legal proceeding against it.

sd/-
Remembrancer of Legal Affairs.

U. R. to E. D. No. 5311 dated the 13th June 1941.

MRR.
26/4.

No. 2847-II/E.
Educational Department,
Bombay Castle, 17th July, 19

From

The Secretary to the Government of Bombay,
Educational Department,

To

The General Manager,

G. I. P. Railway,
Victoria Terminus,
BOMBAY.

Subject:- Building Grant
Railway School, Igatpuri.
Revaluation of School Building.

Sir,

I am directed to refer to the correspondence ending with your letter, No. 4653-B-134, dated the 29th January 1941, regarding the refund of the sum of Rs. 8,609 to the Government of Bombay, and to state that, though in the year 1928 the Government of Bombay and the Central Government owning the G. I. P. Railway, were not different legal entities as stated by you, still, in condition No. 4 of the Memorandum of Conditions executed by the Agent, G. I. P. Railway, and Honorary Secretary, Railway School Board, Igatpuri, in consideration of the building grant given by the Government of Bombay, it was agreed stipulated that all the premises and buildings in respect of which the grant was paid will be used as and for the purposes of a Railway school to be devoted wholly to education and in part to secular education. It is admitted by the Railway Administration that the building has ceased to be used for the purposes of the School. In the circumstances, I am to observe that the Railway Administration is bound, at least in equity, to refund the grant made to it by the Government of Bombay. This position I am to point out, has also been accepted by the Railway Board which has stated that the Memorandum of Conditions of 1928 read with clause 60 of the Code of Regulations for European Schools in the Bombay Province amounts to a mortgage (vide your letter under reference). I am also to observe the althou

although the Government of India and the Provincial Governments were not different egal entities in theyear 1925, the financial relations between them were conducted as if they were different legal entities, as is apparent from the fact that they had separate accounts. If the Government of Bombay incurred any expenditure on behalf of the Government of India, such expenditure was recovered from that Government. I am, therefore, to state that the Railway Administration is not justified in refusing to refund the amount of grant to the Government of Bombay on a mere technical ground. Hence I am to request that you will be so good as to reconsider the case in the light of these observations and to agree to refund to the Government of Bombay the sum of Rs. 8,600/- as already requested.

I have the honour tobe,

Sir,

Your most obedient servant,

sd/- K. L. Panjabi,

Secretary to the Government of Bombay,

Educational Department.

No. 2847-II/K.
Educational Department
Bombay Castle, 17th July 1941

Copy with a copy of the letter to which it is a reply, forwarded for information to_

the Director of Public Instruction (with reference to the correspondence ending with Government Endorsement Educational Department, No. 2847-II-K dated the 22nd March 1939).

the Accountant General, Bombay (with reference to the correspondence ending with Government Endorsement, Educational Department, No. 2847/K. dated the 5th March 1940 the Finance Department.

The Remembrancer of Legal Affairs (with reference to his Memorandum No.5311, dated the 13th June 1941)

By order of the Governor of B'bay,

sd/-

for Secretary to the Government of Bombay,

Educational Department.

sd/-
26/4.

Great Indian Peninsula Railway.

General Manager's Office.

Victoria Terminus.

Bombay, 28th January, 1941.

To

The Secretary to the Government of Bombay,

Educational Department,

Bombay Castle.

Dear Sir,

Railway School at Igatpuri.
Your letter No.2347/K of 6/1/41.

I beg to state, in continuation of my letter No. 4053/B/132 dated 18-1-1941, that the Railway Board have advised me that the Memorandum of Conditions of 1928, copy attached, read with clause 60 of the Code of Regulations for European Schools, Bombay Presidency, would amount to a mortgage, but as in 1928 the Government of Bombay and the Central Government owning the G. I. P. Railway were not different legal entities no legal rights could have been created between them.

2. In the circumstances, it is regretted that no refund is payable by this Railway to the Government of Bombay.

Yours ~~faithfully~~ faithfully,

sd/-

General Manager.

Mkr.
26/4.

Office of the R. L. A.

Rule 10 of the Bombay Civil Services Classification and Recruitment Rules is made under clause(b) of sub-section(1) of section 241 of the Government of India Act, 1935. In effect it delegates to the heads of Departments the power to make appointments to subordinate services. " Delegation does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things, which otherwise that person would have to do himself" (Huth vs. Clarke 25 Q. B. D. 391). As therefore by delegation the delegating authority is not denunded of its and authority Government is not divested of any of its powers to make appointments to civil services and posts under clause (b) sub-section (1) of section 241 of the Government of India Act, 1935. Consequently it would be open to Government to make appointments to the posts of Administrative Officers of the School Boards. However, if it isintended that the Director of Public Instruction who is Head of the Department inthis case should in no case exercise the power of making appointments to the posts in question, an amendment of the rule will be necessary.

sd/-
Remembrancer of Legal Affairs.

U. R. to the E. D. No. 3469 dated the 21st April, 1941.

MRR.
26/4

R. I. No. 303 date.
20/4/1941.

Office of the R. L. A.

The question for the Remembrancer of Legal Affairs' consideration is whether it will be open to the Provincial Government to require its servants(new entrants) to execute a bond agreeing to do military service if and when called upon to do such service.

2. Under clause (b) of sub-section (1) of section 241 of the Government of India Act, 1935, except as otherwise provided by the Act, appointments to the civil services of, and civil posts under, the Crown in India have to be made in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct. Under clause (b) of sub-section (2) of thesaid section, except as expressly provided by the Act, the conditions of service of persons serving His Majesty in a civil capacity inIndia shall be such as may be prescribed in the case of persons serving in connection with the affairs of a province by rules made by the Governor of the Province or by some person or persons authorised by the Governor to make rules for the purpose. In virtue of these provisionsin it will be open to the Provincial Government to prescribe that the persons to be recruited to the services of the Province or to be appointed to posts in connection with the affairs of the Province shall execute a bond agreeing to serve on military duty when called upon to render such duty. There is nothing in the Government of India Act to prohibit the Provincial Government of India Act to prohibit the Provincial Government from laying down such a condition of service. It is true that the military service which such persons may be called upon to render willnot be service ina connections with the affairs of the Province, but it is nowhere laid down inthe Act that persons serving in connection with the affairs of a Province should in no circumstance serve in connection with the affairs of the Federation. It, therefore, follows that a condition that thenew entrants should execute a bond for doing military

military service will be a condition of service which the provincial Government can legitimately lay down in the case of its servants.

sd/-S/S

Remembrancer of Legal Affairs.

U. R to the P & S. D. No. 4132 dated the 7th may 1941.

mm.
26/4.

Submitted,

It appears that the Notified Area Committees of Rajapur and Khed had been levying terminal tax and octroi respectively on tobacco since before 1-4-37 till the dates of their conversion into Rajapur and Khed Municipalities which event happened on 1-4-40 (p.33 of G. D. file 1507/33V) Soon after the Notified area Committees were converted into Municipalities, the Municipality of Rajapur made rules for the levy of terminal tax on tobacco & the Commissioner sanctioned the same. As however the Commr doubts whether the N. A. committees and the Municipalites which have replaced them are one the same bodies, he had raised the question of continued validity of thelevy of the terminal tax by the Rajapur Municipality and has requested Govt to confirm his action inm sanctioning the levy of the tax. The question for R. L. A's consideration is (not as raised inthe concludingportion of para 4 of the G. D. note but) whether a Municipality which is constituted in place of a N. A Committee can continue to levy under sec.143(2) of the Govt of India Act, 1935, taxes falling in the Federal Legislative List which immediately before 1-4-37 were being lawfully levies by such N. A. committee

2. Sec. 143 (2) of the Govt of India Act, 1935 saves the continued levy of taxes duties, ceases andfees falling in the Federal Legislative List which immediately before 1-4-37 were being lawfully levied by

any provincial Govt, Municipality or other local authrity or/body for the purposes of the Province municipality, district or other local area. The section does not require that the local authority or body which should continue to levy taxes etc. after 1-4-37 should be the same authority or body which immediately before 1-4-37 was lawfully levying the taxes etc. All that thesection requires is that the taxesetc. should be applied to the same purposes for whichthey were levied immediately before 1-4-37. To hold otherwise would be to write in Sec. 143(2) words like "such municipality, local authority or body" after "continue to be levied" but that would be against the general rule not to import into statutes words which are not to be found there.

(see Craies on Statute law 4th edn. p. 104) The conclusion therefore is that the Rajapur Municipality can continue to levy the terminal tax which the Notified Area Committee which it has replaced was levying immediately before 1-4-37.

sd/-
21/4

S. A. S.
sd/-
D. S. given to Mr. Chandhani after discussion.

sd/-
12/5

MRR.
26/4.

Office of the R. L. A.

Section 143(2) of the Government of India Act, 1935, provides that any taxes, duties, etc. which immediately before the commencement of Part III were being lawfully levied by any Provincial Government, Municipality or other local authority or body for the purposes of the Province, Municipality, District or other local area may notwithstandingthat these taxes, duties, etc. are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature. Section 143(2) thus saves the continued levy of taxes fallingk in the Federal Legislative List which immediately before 1st April 1937 were being lawfully levied by any local authority or body for the purposes of any local area. The section does not require that the local authority or body which may continue to levy taxes after 1st April 1937 should be the same authority or body which immediately before 1st April 1937 was lawfull levying such taxes.. All that the sectionxxx requires is that the taxes should be applied to the same purposes for xxxx whichxxx they were levied immediately before 1st April 1937. Morever, under section 189 of the Bombay District Municipal Act, a notified area committee appointed under section 188 of the Act is to be deemed to be a Municipality. It therefore appears that if the Rajapur Notified Area Committee had been levying immediately before 1st April 1937 a terminal tax on tobacco the Municipality which has replaced it can xx also continue to levy that tax after 1st April 1937.

sd/-
Remembrancer of Legal Affairs.
sd/-
U. R. to G. D. No 5171 dated the 7th June 1941. 5/6/41.

MRR.
26/4.

Office of the R. L. A.

The view taken by Deputy Secretary, Finance Department in his note dated 3rd April 1941, at page 134 ante that the requirements of Prviso(b) to section 242(4) will be sufficiently met by the approval now accorded by Government is correct.

It is not necessary that the draft of the rules to be made by the Chief Justice under section 242(4) should also be shown to Government, if they are in accordance with the conditions laid down by Government in its letter at pages 135-136ante.

sd/-

Remembrancer of Legal Affairs.

U. R to H. D. No. 6309. dated the 13th June 1941.

mgn.
30/4.

R. I. No. 1849.
22/2/41.

2. In his note dated 20-2-41 Deputy Secretary, P & S. Department says:-

(1) no declaration under s. 262(2) of the Act is necessary in the case of those non-British subjects who were in the permanent service of the Provincial Govt. on 31st March 1940. vide para 2 of R. L. A's opinion No. 10381, dated 25-11-40 at p. 19ante;

(2) declarations are necessary in the case of those non-British subjects.

(a) who were in temporary service on 31-3-1940, and were subsequently confirmed or otherwise still continue to be in service, provided they are subjects of States or territories which have been accepted by Govt. for the purpose of declaration under s. 262(2). These declarations should have retrospective effect from 1-4-1940 (vide para 2 of R. L. A.'s opinion at p. 19ante);

(b) who have been employed between 1st April 1940 andnow (provided as above);"

He further says that both the declarations under 2(a) and 2 (b) above may have retrospective effect from 1-4-1940 in respect of subjects generally of Indian States or territores adjacent to India specified in th Declaration of 1st October 1938 and that it is unnecessary to name the individuals who are already in service. The question referred to the R. L. A. is whether declarations on the above lines would regularise the position up to date in respect of persons employed between 1-4-1940 and the date of the issue of the fresh declaration.

3. Secondly D. S. P & S Deptt., points out that there may be declarations issued in respect of named subjects of specified states or territories adjacent to India in which the offices were specified He says that since these individual declarations do not cover all subjects of the States specified for all offices, the declarations

under 2(a) 3(b) would not cover them. In his opinion no action is required inthese cases if the declaration in each case specified the state or territory and the office in question. The A. L. A. is also requested to state if he agrees with the above view.

MJR.
26/4.

Office of the R. L. A.

The view taken by D. S. P & S. D. in para 6 of his note is correct. Declarations in respect of persons mentioned in (a), (b) and (c) of para. 6 (2) of his note may be on the lines suggested by him.

2. As regards declarations already issued, no action is necessary in cases in which the declarations are in respect of persons who were in permanent service of the Crown on 31st March 1940. In other cases, the declarations will have to be scrutinised. Sub-section (2) of section 262 of the Government of India Act, 1935, as amended, provides inter alia that the Governor may declare any subject of a specified Indian State to be eligible to hold any civil office in connection with the affairs of the Province. In view of the omission of the words "being an office ~~of him~~ specified in the declaration" from sub-sections(1) and (2) of section 262, the Government of India have taken the view that declarations in which the offices have been specified are invalid. It seems to me, however, that it is possible to take the other view that the power to declare a person to be eligible to hold any civil office in connection with the affairs of the Province includes a power to declare him to be eligible to hold any particular office. If, therefore, the course sugested by S. S. P & S. D. in para 7 of his note as regards declarations already issued is considered to be more suitable from the Administrative point ~~of~~ of view, it may be followed.

sd/-

Remembrancer of Legal Affairs

U. O. to P & S. D. No. 4009 dated 31st May 1941.

MM.
26/4.

Office of the R. L. A.
R I No. 4599
22/5/1941.

By G. R. F. D. No. 3464/33, dated 7th March 1939, Government in pursuance of its policy to encourage the development of Indian Insurance companies, directed that whenever it is found necessary to insure Government property or property controlled by Government or by any of its officers inhis official capacity, it should invariably be insured with certain Indian Companies mentioned in the G. R. It is stated that when this G.R. was issued the rates quoted by the British Companies and the Indian Insurance companies for such insurance were the same. By its letter dated 21st February 1941 (pp. 2-3 ante) TheNational Employers' Mutual General Insurance Association, Ltd., a company incorporated in England has requested Government that it should also be recognised for purposes of insurance of Government or Government controlled properties. It is stated that the premia rates charged by this Company are lower than those charged by The Indian Insurance Companies mentioned in the G. R. F. D. No. 3464/33, dated 7th March 1939. The question raised for consideration of the R. L. A. is whether the non-recognition of this Company for the purposes of insurance of Government property would offend aginst the provisions regarding commercial discrimination contained in the Government of India Act, 1935.

2. The relevant provisions are those contained in section 113 of the Government of India Act, 1935. That section provides that a company incorporated, whether before or after the passing of the Act or under the laws of the United Kingdom and the members of the governing body of any such company and the holders of its shares, stock, debentures, debenture stock or bonds and its officers, agents and servants shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies carrying on or proposing to carry onbusiness inBritish India requirements or conditions relating to or connected with-

(a) the place of incorporation of a company or the situation of its registered office, or the currency in which its capital or loan capital

is expressed; or

(b) the place of birth, race, descent, language, religion, domicile, residence or duration of residence of Members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds or of its officers, agents or servants.

The orders in this case are merely executive orders and as such they do not infringe any of the provisions of section 113. There are also no other provisions in the Government of India Act which would make these orders illegal. The orders are therefore legal an intra vires of the Government of India Act, 1935. In this connection attention is invited to the following observations of Sir Nr.N. Sircar during the debate in the Legislative Assembly on the Insurance Bill:-

'But from the practical point of view, there is nothing to prevent the provinces from insuring with the Indian Companies.

The non-recognition of the National Employers' Mutual General Insurance Association. Ltd. for the purposes of insurance of Government property in pursuance of the orders in G. R. F. D. No. 2464/ 33, dated 7th March 1939; would not therefore offend against any provision of the Government of India Act.

3. Clause(d) of sub-section (1) of section 52 of the Government of India Act, 1935, provides that in the exercise of his functions the Governor shall have the special responsibility of securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of the Act are designed to secure in relation to legislation. The purposes which the provisions of section 113 are intended to secure are to place companies incorporated under the laws of the United Kingdom on a par with companies incorporated under the laws of British India (see R. L. A.'s No. 259-L, dated 19th July 1938)

In this case it is true that all that the orders state is that Government property or proerty controlled by Government or by any of its officers in his official capacity should be insured with certain Indian Insurance Companies. But the effect of the orders clearly is that no British insruanee company can get Government business. It therefore appears that the orders contained in the G. R. referred to above would attract the special responsibility of the Governor under section 52(1)(d) of the Act. It would be for H. E. the Governor to decide whether he should exercise such responsibility in any particular case. Attention is inthis connection invited to the reply of the Secretary of State, Sir Samuel Hoare, to a question from the Marquess of Zetland and referred to in paragraph 4 of Secretary, F. D.'s note dated the 5th June, 1940, at p. 210 of F. D. File No. 3464/33-II.

sd/-

Remembrancer of Legal Affairs.

U. R. to F. D. No. 149-L dated the 21th July 1941.

MRR.
27/4

Office of the R. L. A.

As in view of the ruling of the Secretary of State and the Governor General the withdrawal of the rent-free concession in the case of certain officers was not justified, it will be necessary to restore the conession with effect from the date from which it was withdrawn and as such the orders will have to be given retrospective effect. The view taken by Deputy Secretary, P & S. D. in paragraph of 2 of his note at page 79 ante is correct.

sd/-
12/7

Remembrancer of Legal Affairs.

U. R. to P & S. D. No. 106-L dated the 12th July, 1941.

MRR.
27/4

R. I. No. 1978 d 27/8/4

Office of the R. L. A.

These papers are referred to the Remembrancer of Legal Affairs for advice as to the liability of the property of the Central Government leased to third parties, to the levy of the urban immovable property tax. There are, as stated in Secretary, Finance Department's note, two classes of property belonging to the Central Government namely:-

(1) Lands belonging to the Central Government which have been leased to third parties and onwhich these parties have constructed buildings; and

(2) buildings which belong to the Central Government and have been leased by that Government to third parties. The question for Remembrancer of Legal Affairs' consideration is whether such lands andh buildings are exempt from the levy of the Urban Immoveable Property tax.

2. Attention is invited to R. L. A.'s (Mr. Khurandhar's) opinions Nos. dated 2514, dated 6th March 1940 and 6301, dated 25th September 1940 and to the present Advocate General's opinion No. 22, dated 11th July 1938. According to these opinions lands and buildings belonging to the Central Government do not cease to vest inthat Government after they are leased to third parties even if the period forwhich they are leased extends to 999 years. Such lands and buildings will not on the strength of these opinions be liable to any Provincial Taxation in view of Section 154 of the Government of India, 1935. A contrary view however appears to have been taken by the R. L. A. (Mr. Son) in his opinion No. 2070, dated 24th April 1937 and the Advocate General Mr. Kemp in his opinion No. 78, dated the 4th October 1937. Mr. Kemp considered the question of the right of the Provincial Government to assess to land revenue any land belonging to the Central Government sold or otherwise disposed of by the Central Government.

~~into consideration~~ From the papers connected with Mr Kemp's opinion in R. D. File No. 0677/28-Part I (pp. 153-167) it appears that he had also taken into consideration the case of the lease of lands. In his opinion the word "vested" ~~in~~ section 154 of the Government of India Act must be read as meaning "for the time being vested" He accordingly held that the Provincial Government had a right to assess to land revenue lands sold or otherwise disposed of by the Central Government to third parties. The view taken by Mr. Sen and Mr. Kemp seems also to be in keeping with the view taken by the Government of India. It would appear from the correspondence that passed between the Government of Bombay and the Government of India in 1939 regarding the levy of assessment on certain "~~Military~~ Military lands" that the Government of India did not press its claim for any exemption from the levy of the Urban Immovable Property tax in respect of their lands leased to third parties (vide letter of the Government of India, No. D. 3060-F, dated 20th May 1939, letter to the Government of India No. 0677-G/28, dated 14th Oct. 1939 and letter of the Government of India No D 6614-F dated 14th November 1939) and this was presumably, as pointed out by Secretary Finance Department, on the advice of ~~the~~ their law officers. The Government of India has also agreed to pay to the Bombay Government a certain percentage of its receipts from such lands on account of the land revenue which would otherwise be payable in respect of such lands (see Government of India letter No. D/1398-F, dated 16th March 1940, at pp. 170-170 of R. D. File 0677/28-Part II). It would in the circumstances not be unreasonable to ~~see~~ argue that any land or building after it is leased by the Central Government particularly for such long periods as 99 or 999 years ceases ~~for~~ for the time being to vest in His Majesty for purposes of the Central Government within the meaning of section 154 of the Government of India Act, 1935 and would therefore be liable to Provincial taxation. The powers of the Central Government to dispose of lands vesting in it cannot be used so as to destroy the powers of the Province to levy taxation (1924 A.C. 999 at page 1006). However in view of the contrary opinion given by the present Advocate General, the question cannot be said to be

to be free from doubt. It is therefore for Government to decide whether it should continue to levy the tax ~~on~~ on such lands and buildings as already decided on Revenue Department File No. 9077/28-Part I (pages 205-207) until its validity is challenged in a court of law.

sd/-
Remembrancer of Legal Affairs.

U. S. to F. D. No. 3530, dated the 22nd April, 1941.

MRÎ.
27/4.

COPY

Advocate General'S Chambers,
HIGH COURT,
Bombay, 4th October, 1937.

With reference to letter No. A. D. M. 134 dated the 10th September 1937 from the Collector of Bombay.

Subject:- Proposal to assess lands of the Government of India after their disposal by the said Government.

In my opinion, the term "vested" in Section 154 of the Government of India Act 1935 must be read as meaning "for the time being vested", and when the property is no longer vested inHis Majesty for the purposes mentioned in the Section the exemption therein provided will cease. In that view I can see no reason to doubt the legality of the proposal to assess to land revenue any land sold or otherwise disposed of by the Government of India. In view of the fact that land so sold has in the past not been assessed, I agree that notice should be ~~ex~~ given to the Government of India and intending purchasers that assessment will hereafter be levied. The arrangement suggested in the note of 12th July 1937 does not seem inappropriate.

sd/- K. McI. Kemp.

ADVOCATE GENERAL.

True copy,

sd/- C. M. Eastley.

Solicitor to the Govt. of Bombay.

MRR.
27/4

Re: Assessment of Government of India
lands transferred to Private persons.

With reference to the Memorandum in the above matter submitted to me by the Government Solicitor, I have to state as follows:-

1. These lan s became vested in His Majesty for the purposes of the Government of the Federation under Section 172(1) (b) of the Government of Indian Act 1935. By reason of Section 154 of the Act, they remain exempt from all taxes imposed by a Province so long as they remain so vested. The question is whether the grant of a lease of these lands by the Central Government for 99 years or 999 years would result in these lands ceasing to vest in the Central Government.

2. Section 105 of the Transfer of Property Act defines a lease as a transfer of a right to enjoy the property for a certain time, express or implied, or in perpetuity. A lease, therefore, though it may be for a long term or in perpetuity, is not a transfer of ownership in the property, as in a sale, but a transfer merely of a right to enjoy the property. The Lessor carves a subordinate interest out of his own interest inthe property and does not annihilate his own interest. It is clear therefore that notwithstanding the leases contemplated, the Central Government would still remain the owners of these lands and these lands would still continue to vest inthem subject to the leases granted by them. Notwithstanding the leases, therefore, the exemption from all taxes imposed by the Province granted by Section 154 of the Act will continue to a ply to these lands.

3. The opinion of the Advocate General dated the 4th October 1937, though it uses the expression "sold or otherwise disposed of" refers to sales by the Central Government, which would

result in divesting them of the property inthese lands.

4. Apart from the legal position stated above, I consider the proposed draft reply to be sent to the Central Government as suitable.

5. It would only be fair to purchasers of land from the Central Government, that it should be made clear to them that they would be liable to the payment of land revenue to the Government of Bombay. This could be done by either incorporating a statement to that effect in the documents to be executed by the Central Government in favour of the purchasers or in some other manner.

sd. M. C. Setalvad,

Advocate General.

11/7/1938.

True Copy,

sd. C. M. Eastley,

Solicitor to the Govt.

of Bombay.

MRR

27/4.

R.I.No.14.L D 6/6/1941.

Office of the R. L. A.

There is undoubtedly a distinction between the two classes of properties mentioned in paragraph 1 of R. L. A's opinion dated 22nd April 1941. As pointed out by the Secretary, F. D. inthe case of properties falling in class (1) while the lands belong to theCentral Government the buildings standing thereon do not, and in the case of properties falling in class (2) both the lands and buildings belong to the Central Government. The distinction between the two classes of properties was however not drawn in the previous opinion of the R. L. A. because the Urban Immoveable Property tax is leviable both on lands and buildings and is assessed onthe annual letting value. In the case of land with superstructure the annual letting value can only be of the property as a whole and not of the superstructure alone. It appears, however, from the Secretary, F. D.'s note that cases in which the Central Government has leased the building belonging to it are few and far between. Such leases are also generally for short periods. There is, therefore, no objection to the suggestion made by the Secretary, F. D. that the tax should not be levied on such properties. As regards properties falling in class (1), Government would, it seems, have a strongercase to levy the Urban Immoveable Property tax than in the case of properties falling in class (2) But it may be pointed out that there may be cases in whichthe Central Government has leased lands for short periods and on which third parties have erected temporary structures. In such cases it will not be desirable to levy the tax. There may also be another class of cases in which lands have been leased for long periods, but not for building purposes; and in such cases

There is no sufficient reason why the tax should not be levied.

2. As pointed out inxx the previous opinion of the L. A. the legal position is not entirely free from doubt. The course which is most convenient from the administrative point of view may, therefore, be followed until the question is taken to the Federal Court for decision.

sd/-

Remembrancer of Legal Affairs.

U. O. to F. D. No. 101-L dated the 11th July 1941.

HMR.
27/4.

The question for R. L. A's consideration inthese papers is whether it is competent to Government to effect retrenchment in the staff of the Official Assignee's Office without the consent of the Chief Justice.

2. Attention of thehome Department is invited to R. L. A's opinions in regard to the position of the Official Assignee with which the Advocate General has agreed (vide R. L. A's opinion No. 2770, dated 24th May 1937, No. 3808, dated the 20th July, 1937, No. 7191, dated the 28th December 1937 and No. 101, dated the 7th January 1941) According to the view held by the R. L. A. and the Advocate General the Official Assignee is not an officer on the staff attached to the High Court. If the Official Assignee is not an officer on the staff of the High Court, it follows that the officers serving onthe establishment of the Official Assignee are also not persons serving on the staff attached to the High Court. Their appointments would therefore be regulated by section 241 and not by section 242(4) of the Government of India Act 1935. These officers would consequently stand on thesame footing as any other servant of the Crown and as such it would be technically competent to Government to effect retrenchment in their strength without the consent of the Chief Justice.

3. The High Court has however taken a contrary view and maintains that the Official Assignee is a person serving on the staff attached to the High Court. If this view be correct, the officers on the establishment of the Official Assignee would also be persons serving on thestaff attached to the High Court. Assuming that the High Court's contention is correct, the next question for consideration is whether under section 228(2) of the Government of India Act, 1935, it would be possible for Government to intervene at the time of framing the budget or under clause 8 of the Letters Patent in order to

in order to secure retrenchment in the Official Assignee's staff. Attention is in this connection invited to R. L. A's opinion No. 1095, dated the 30th January 1939. As pointed out in that opinion and the previous opinion referred to therein, the appointment of the Official Assignee and his staff is necessary for the administration of the High Court and as such the expenditure incurred for this purpose whould be administrative expenses of the High Court. Under sub-section (2) of section 228 of the Government of India Act, 1935, the question as to the amount to be included in respect of such expenses in any estimate of expenditure is to be decided by the Governor in his individual judgment and therefore it would be possible for the Governor to intervene at the time of framing the budget, should the High Court refuse to agree to the reduction of the staff as desired by Government. Attention is in this connection invited to paragraphs 6,7, 8, 13 and 14 of Secretary, F. D's note at pp.111-123 in Hm. D. File No. 6481/3-IV/ 1937-39, which was discussed between Lord Braborne and the Chief Justice(see page 105-107 in the same file).

4. It does not, however, appear that any retrenchment in the Official Assignee's staff can be made by Government in exercises of the powers under clause 8 of the Letters Patent. The relevent portion of this clause is as follows:- " And we do hereby authorise and empower the Chief Justice of the High Court of Judicature at Bombay from time to time as occasion may require, and subject to any rules andrestirctions which may be prescribed by the Governor in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these our Letter Patent. Under section 242(4) read with section 241(2) (b) of the Government of India Act, 1935, the Chief Justice has power to make appointments and to prescribe conditions of service of persons

serving on the staff attached to the High Court, but there are no provisions similar to those contained in section 244(3) or section 240 of the Act giving the Chief Justice power to determine the strength of the staff. The power is given to him by clause 8 of the Letters Patent, but it is subject to

MMM,
27/4.

any rules and restrictions which may be prescribed by the Government. The Provisions in clause 8 giving power to Government to prescribe rules or ~~xxxxxx~~ restrictions are not inconsistent with any of the provisions of the Government of India Act and therefore continue to be in force. Under these provisions it will be open to the Government to direct that the Chief Justice shall not appoint more than a specified number of clerks and ministerial officers. Such directions can, however, only be given in regard to appointments which the Chief Justice may hereafter make and will not be applicable to appointments already made. It will not, therefore, be possible for Government under clause 8 to require the Chief Justice to retrench any persons now serving on the staff of the Official Assignee; but Government can fix the future strength of such staff and direct that any post in excess of such strength which may hereafter fall vacant ~~xxx~~ shall not be filled.

Sd/-

Remembrancer of Legal Affairs

U. O. to H. D. No. 6454, dated the 23rd July 1941.

MRR.
27/4.

Office of the R. L. A.

Sub-section (1) of section 270 of the Government of India Act, 1935, provides that No proceeding civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the crown in India before the relevant date, except with the consent, in the case of a person who was employed inconnection with the affairs of the Government of India, of the Governor General in his discretion. 'The relevant date' means in relation to acts done by persons employed about the affairs of the Federation, the date of the establishment of the Federation. Federation has not yet been established and consent of the Governor-General would therefore be necessary for the prosecution of a person employed in connection with the affairs of Government of India for anything which is done or purports to have been done by him in the execution of his duty as a servant of the crown. But it has been held that when a public servant embezzles some property entrusted to him and thereby commits a criminal breach of trust under section 409, Indian Penal Code, he is not doing an act, nor even purports to do an act in execution of his duty; when he commits the act, he does not pretend to act in the official discharge of his duty and a case like that would not ordinarily fall within the scope of section 270(1).

(Hori Ram Singh v. The Crown (1939) F. C. R. page 159

at page 161; see also 1940 M. W. N. page ~~152~~ 1116).

The Governor General's sanction is therefore

MHR,
27/4.

not required when a person employed in the postal department is to be prosecuted for an offence under section 409, Indian Penal Code.

sd/-

Remembrancer of Legal Affairs.

U. R. to P. & S. D. No. 5746, dated the 30th June 1941.

MRR.
27/4.

Office of the R. L. A.

The question for consideration of the R. L. A. is whether the Collector can be authorised to credit the sale proceeds of the assets of the European Club at Matheran to the War Gifts Fund.

2. Since there are no members of the European Club at Matheran the assets of the Club vest as bona Vacantia in His Majesty for purposes of the Government of the Province of Bombay under section 174 of the Government of India Act, 1935 and consequently the sale proceeds will have in the first instance to be credited to th Provincial revenues. It would not therefore be ~~kmgk~~ legal to authorise the Collector to pay the sale proceeds direct to the War Gifts Fund.

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21/7

Remembrancer of Legal Affairs.

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21/7/41.

U. R. to R. D. No. 6416, dated the 22nd July 1941.

MRR.
27/4.

Office of the R. L. A.

The question for consideration is whether the phrase Province of Bombay" includes the States in Maharashtra, Gujarat, Kathiawar and Cutch which are generally known to be territorially associated with the Province of Bombay.

2. Under section 311 of the Government of India Act, 1935, the expression "India" means British India together with all territories of any Indian Ruler under the Suzerainty of His Majesty, all territories under the Suzerainty of such an Indian Ruler etc. the ~~xx~~ expression "British India" means all territories for the time being comprised within the Governors' Provinces and Chief Commissioners' Provinces; and the expression "Indian State" means any territory, not being part of British India, which His ~~xx~~ Majesty recognises as being such a State, whether described as a State, an Estate, a Jagir or otherwise. Reading the definitions of these expressions together, it is clear that the territories of the Indian Rulers and the territories under their suzerainty though they form part of "India" do not form part of "British India or of "Governors' Provinces" (cf R. L. A's Opinion No. 3157 dated the 17th September 1940). The answer to the question raised is therefore in the negative.

sd/-
23/7
Remembrancer of Legal Affairs.

U. O. to G. D. No. 6532 dated the 25th July 1941.

MRR.
27/4.

Office of the R. L. A.

Mr. Moulavi is a member of the temporary establishment of the P. W. D. As provided in paragraph 88(ii) of the P. W. D. Manual, Mr. Moulavi's services can be terminated after a month's notice or on payment of a month's Pay in lieu of notice.

sd/-
S/S

Remembrancer of Legal Affairs.

U. O. to the P. & S. D. No. 202 confl. dated the 10th May 1941.

mm.
27/4.

Office of the R. L. A.

The first question raised for consideration of the R. L. A. is whether Mr. Moulvi, who is under suspension, can be dismissed under paragraph 88 of the P. W. D. Manual after giving him one month's subsistence grant (or one month's pay). This paragraph of the P. W. D. Manual refers to the employment of temporary and work-charged establishment. It provides that if members of temporary establishment are engaged for a specific work, their engagement lasts only for the period during which the work lasts. It further provides that if such member is dismissed otherwise than for serious misconduct before the completion of the work he will be entitled to a month's notice or a month's pay in lieu of notice. These conditions are required to be explained to each member employed and a written declaration is required to be obtained from him that the terms have been clearly understood by him. It is presumed that a declaration as required under this paragraph has been taken from Mr. Moulvi. If so, Mr. Moulvi must be held to have been employed on the terms of his contract. Consequently he can be dismissed in accordance with those terms, i. e. by giving him one month's notice or a month's pay in lieu of notice. If he is given a month's pay it would not amount to reinstatement and he would not be entitled to full pay for the entire period of his suspension. See 1930, 1 Cal. p. 46 at p. 54. The view taken in paragraph 3 of P. & S. D. office note dated 23th June 1941 is not correct During the period of his suspension he will be entitled under rule 151 of theBombay Civil Services Rules only to the subsistence grant His period of suspension can be extended till the date of his dismissal including the period of notice of one month. If therefore it is decided to terminate Mr. Moulvi's services by giving him one month's notice, the notice given to him should make it clear that his services will be terminated with effect from the date of the expiry of one month from the date of the receipt of the notice by him, and that he will remain under suspension

till then and that the subsistence grant for the whole of the period of suspension including the period of notice will be paid to him.

2 The second question raised for consideration of the R. L.A. is whether a departmental enquiry should be held under rule 33 of the Bombay Civil Services Conduct, Discipline and Appeal Rules, before the penalty of dismissal is ~~ex~~ imposed. As already pointed out the dismissal in this case would be in accordance with the terms of the contract as provided in paragraph 88(ii) of the P. W. D. Manual Clause (c) of the Explanation to rule 33 of the Bombay Civil Services Conduct, Discipline and Appeal Rules provides that thedischarge of a person engaged under contract, in accordance with the terms of his contract does not amount~~s~~ to removal or dismissal within the meaning of this rule. The dismissal of Mr. Moulvi, therefore, in this case does not fall under clause (vii) or (viii) of rule 33 and no enquiry such as is laid down in rule 55 of the Civil Services(classification control and ~~A~~Appeal) Rules, 1930, need therefore be held for ~~the~~ this purpose (cf. Secretary of State for India in Council vs Surendra Nath Goswami, I. L. R. 1 Cal. p. 46)

3. As regards the point referred to R. L.A. in paragraph 7 of the P.W.D. office note at p. 180 ante, the High Court has not yet decided the appeal.

sd/-
8/8
Remembrancer of Legal Affairs.

U. R. to P. W. D. No. 7046 Confl., dated the 9th August 1941.

MRR.
27/4.

Office of the R. L. A.

Section 142A(2) of the Government of India Act, 1935, prescribes that the total amount payable in respect of any one person to the Province or to any one municipality, district local board, local board, or other local authority in the Province by way of taxes on professions, trades, callings and employments shall not, after the 31st day of March 1937, exceed fifty rupees per annum. Under this provision the maximum amount of the profession tax which the District Local Board, Sholapur, can levy on any one person will be Rs. 50 per annum. In the present case the amount of the profession tax in the case of the licensee of a motor vehicle is Rs. 10/- for each conveyance and in the case of the licensee of a horse-drawn carriage is Rs 2½ for each conveyance. But the amount which any licensee has to pay in respect of more than one conveyance is subject to the maximum of double the amount payable in respect of each such conveyance. In other words, the maximum amount of the profession tax which a licensee of motor vehicle has to pay is Rs. 20/- and the maximum amount of the said tax which a licensee of horse-drawn carriages has to pay is Rs. 5/-. The expression * " For more than one conveyance of <u>any of the kinds</u> a maximum of double the charges shall be levied irrespective of the number of each kind of conveyance. occurring in column 3 on p. 9 ante against entry "2(b)" is in the nature of a proviso common to both "2 (a)" and "2 "2(b)" in column 2. The amount of the profession tax which any licensee has therefore to pay under the entries referred to will not exceed in any case the amount or Rs. 50/- and as such the levy of the tax will not contravene the provisions of section 142A(2). The entries "2 (a)" and "2(b)" in Group II at p. 9 ante do not consequently require any modification

2. It is presumed that the profession tax which the District Local Board, Sholapur proposes to levy is an annual tax.

sd/-
31/7

Remembrancer of Legal Affairs.

U. R. to G. D. No. 6780 dated the 1-8-1941.

MMR.
27/4

R.I. No. 6024, dated 18/8/41.

Submitted.

The Revenue Department propose to forward a copy of the R. L.A.'s opinion interpreting the expression "revenue case" in section 296 of the Government of India Act, 1935, to D. B. Shingne, Non-official Member of the Bombay Revenue Tribunal. The R.L.A. is requested to state whether he has any objection to this course.

2. A copy of R. L. A.'s opinion dated 27-11-1937 concurred in by the Advocate General and H. M. H. & L. D. will be found at p. 341 of L. D. File O. G. of I 37-III. The R. D. may perhaps be informed there is no objection copy of opinion being forwarded D. B. Shingne.

sd/-
20/8/41.

A S sd/-20/8

RIA sd/-21/8

U.R. to R. D. No. 7424 dated 22-8-1941.

MRR.
27/4

Office of the R. L. A.

The view taken by the Deputy Secretary, General Department in paragraphs 3 to 7 of his note dated 31st January 1941 is correct.

2. As regards paragraph 9 of his note, the opinion given by the Advocate General dated 24th March 1940 relates to imposition of a terminal tax on road borne goods by a Borough Municipality in virtue of the provisions in section 73(v) of the Bombay Municipal Boroughs Act, 1925. The Advocate General held that this tax did not fall in any of the entried in any of the three lists inthe seventh Schedule to the Government of India Act, that the provision in section 73(v) of the Bombay Municipal Boroughs Act was saved by the provisions of section 293 of the Government of India Act and that, therefor , the levy of this tax under the said section 73(v) of the Bombay Municipal Boroughs Act was legal and valid. It may be pointed out that the above opinion of the Advocate General is not consistent with the view taken by the Remembrancer of Legal Affairs in his No. 2043, dated 12th March 1940. As, therefore, the question is not free from doubt, the General Department may consider whether instead of modifying the circulars it would not be more desirable to leave matters as they are.

sd/-
15/4

Remembrancer of Legal Affairs.

U.R. to G.D. No. 3338, dated the 17th April, 1941.

MRR.
27/4

Clause 2 of the Professions Tax Limitation Bill introduced by the Government in the Legislative Assembly provides as follows:-

"Notwithstanding the provisions of any law for the time beingin force, any taxes, duties, cesses, or fees payable in respect of any one person to a ~~district~~ Provincial or to any one Municipal council board, local board or other local authority in any Province, by way of tax on professions, trades callings or employments, shall from an after the commencement of this Act cease to be levied to the extent to which such taxes, duties, cesses or fees exceed ~~Rs~~ Rs. 50per annum."

2. The question for R.L.A's consideration is whether any of the taxes, duties and fees which the Government of Bombay is levying at present willcome within the purview of the expression "tax on professions, trades callings or employments" used in clause 2 of the Bill in other words whether the taxes, duties or fees levied by the Government of Bombay for controlling and regulating the plying of a trade, profession etc. would be considered as a tax on professions, trades, etc. within the meaning of clause 2 of the Bill.

3. The expression "tax onprofessions, trades callings or employments" is not defined in the Government of India Act, 1935, nor in the proposed Bill. Several books on Public Finance have been referred to, but they do not containanything useful for

deciding the question under consideration.
As pointed out in B.L.A's opinion No. 5405 date 27th June 1939 it is possible to levy a trades and professions tax on the basis of a licensing system butthe fees will have to be levied with reference to a profession, trade, calling or employment. Although the point is not quite free from doubt, it would a pear that a tax on profession, trade, callingor employment can only be levied after a person has entered the profession trade, calling or employment. If a fee is levied from a person for the grant of a sanad or license in order to enable him to carry on any profession, trade, callingor employment, it would not, in my opinion, be tantamount to a tax on profession, trade, calling or employment within the meaning of entry No. 46 in List II of the Seventh Schedule to The Government of India Act. For example the fee which a pleader has to pay for admission and enrolment as a Vakil of the High Court is not a tax on his profession as it is levied in order to enable him to practise in courts. Applying this test to the various license fees referred to in para 2 of the F. D. note dated 17-6-41 at page 17 ante, it does not appear that any of these fees can be considered to be a tax on professions, trades, callings, or employments.

MR[illegible]
27/4/56.

4. The license fees referred to in the F. D. Note are levied under the following enactments:

(1) The Bombay Abkari Act, 1878, Section, 30

(2) The Indian Motor Vehicles Act, 1939 Section. 7

(3) The Indian Electricity Rules, 1937, Rule 11(g)

(4) The Bombay Race-Courses Licensing Act, 1912-Section 4.

(5) The Bombay (District)Tobacco Act, 1933-Section 7.

(6) The Bombay Sales Tax Act, 1939, Section 7.

(7) The Bombay Prize Competition Tax Act, 1939-Section 5.

5. If the provisions of the above enactments under which the fees are levied are examined it will appear that they are all levied in order to enable the licensee to carry on his profession, trade or calling

Under section 16 of the Bombay Abkari Act 1878, no intoxicant can be sold without a license or pass from the Collector. Under section 30 fees are levied for the grant of a license or pass. These fees are levied in order to enable the licensee to carry on his business of selling the intoxicants. They are not levied on his business as such They cannot, therefore, be considered as a tax on profession, trade,

calling or employment within the meaning of clauses 2 of the Bill.

Under section 3 of the Indian Motor Vehicles Act, 1939, a license is necessary in order to enable a person to drive a motor vehicle. Under sub-section (8) of section 7, a fee is levied for such license. The payment of the fee is therefore necessary in order to enable the person concerned to follow the profession of a driver. The fee is therefore not strictly a tax on "professions".

Under section 3 of the Indian Electricity Act, 1910, a person has to obtain alicense on payment of the prescribed fees in order to supply energy in any area. The fees are prescribed under rule 11 (g) of the Indian Electricity Rules.

Under section 4 of the Bombay Race Courses licensing Act the owner, lessee or occupier of any race-course may apply to Government for a license for horse-racing and the license is granted on payment of fees.

Under section 6 of the Bombay (District) Tobacco Act, 1933, no person is allowed to sell any tobacco or carry on business as a broker except under a license which under section 7 is granted on payment of fees.

Under section 4 of the prize Competition Tax Act, 1939, no prize competition can be conduct-uoted unless a license in respect of such competition has been obtained by the promoter thereof from the Collector and under section 5 a fee is prescribed for the grant of such license.

Asregards the Bombay Sales Tax Act, 1939, it is true that under section 6 the license for carrying on the trade can be taken within two months of the trader's starting his business, that is, after the business is started, but it willbe seen from the provisions of section 8 of the Act that a trader who has not obtained a license under section 6 cannot carry on business in th sale or purchase of goods. The license fees under section 7 are therefore levied in order to enable the trader to carry on his business; they are not levied on his business or trade.

It will thus be apparent from the provisions of the various enactments referred to that the fees are levied in order to enable the licensee to enter or follow the profession etc. These fees cannot therefore be regarded as taxes on "professions"

MNR
28/4.

6. As the question is not quite free from doubt and as it vitally affects the fiscal policy of Government, the Advocate General is requested to advise.
He is requested to treat this case as very urgent.

sd/-
22/7

Remembrancer of Legal Affairs

U. O. to Adv. General No. 142-L dated 22nd July 1941.

MMR.
23/4/56

The question for consideration is whether the words "any taxes, duties, cesses, or fees payable x x by way of tax on professions, trades, callings, employments" in clause 2 of the proposed Bill will include and affect the duties and fees at present being levied by the Provincial Government under the provisions of the Acts referred to in paragraph 4 of the Note of the R. L. A.

2. The question in each case will be whether the tax or the fee is being levied "by way of tax on professions, trades, callings, or employments" The expression "taxes on professions, trades, callings or employments" is nowhere defined. A tax of this character does not seem to have been levied in Canada or Australia, and, therefore, no assistance can be derived from the cases decided there in regard to the true meaning of this expression. Primafacie, it could be said with force that there is a fundamental distiati-nction between a tax on a profession or trade, which presumably would mean a tax on the exercise or the carrying on of a profession or a trade, and a tax or a fee which is levied on the obtaining of the privilege of being able to carry on or practise a profession or trade. In the first case, the object of levying the tax is to raise revenue from persons carrying on the profession or trade. In the second case, the object may well be the regulation of entry into the profession or trade in the public interest. For example, the levy of a license fee on a motor driver is the imposition of a charge not on the employment of a motor driver but is a charge levied in order to regulate the entry of persons into that employment, it being necessary in the public interest to regulate such entry. On the other hand, it may be urged that a fee or tax levied on the obtaining of the privilege of carrying on a profession or trade is, notwithstanding the form adopted, a tax on a profession or trade. A tax on a profession or trade may be levied by exacting the payment, which may be a payment in one lump sum or an annual payment

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permission to engage in some business, profession or activity, which in the public interest has been created a privilege. x x x As in the case of fees, it is disputed whether payments in exercise excess of the cost of the regulatory services retain their character of license payments or take on the character of taxes."

5. It will thus be realised that if any of the taxes and fees in question are disproportionate in amount to the cost of the service rendered, they would cease to be fees within the meaning of Entry No. 54. And if at the same time they are not covered by Entry No. 46, there willbe no power left in the Province to continue to levy them.

6. Having regard to the considerations above mentioned, it is necessary to take into consideration each ~~kkm~~ of the taxes or fees in question.

7. The fees levied undersection 7 of the Indian Motor Vehicles Act, (Act IV of 1939), the Bombay District Tobacco Act, 1933 (act II of 1933, as amended by Act VI of 1938), the Bombay Sales Tax Act (Act V of 1939), and, Bombay Prize Competition Act (Act XI of 1939) vary in amount from Rs. 2/- to Rs. 50/-. These clearly would be fees within the meaning of Entry No. 54 and will not fall within the description of taxes on professions etc. Except perhaps that under the Bombay District Tobacco Act (act II of 1933) This fee however does not exceed Rs. 50/- and will not therefore be affected by the proposed Act.

8. Section 3 ofthe Indian Electricity ~~Rules~~ Act, 1910, and Rule 11(g) of the Indian Electricity Rules 1937 provide for the payment of a fee in a lump sum of Rs. 500/- This again, I think, would not be covered by Entry No. 46. It is evidently a payment to be made once andfor all and has not one of the usual characteristics of a tax, viz: that of a periodical recurring payment. Moreover, this license seems to be ~~kkmm~~ levied pursuant to legislation not be the Province but by the Centre.

9. In regard to the fee for a license under the Bombay Race Course Licensing Act, (Act III of ~~1912~~ 1912) I do not know what the amount

what the amount levied is. This could perhaps be regarded as covered by Entry No. 54 and may also be covered by Entry No. 50.

10. As regards the license fees under the Bombay Abkari Act of 1878, I do not know what the amounts levied are. No doubt, having regard to the provisions of the Act, it is clear that the object of issuing a license is to regulate the trade in the public interest. If however the levy of these license fees is made a source for obtaining revenue by auctioning the licenses or otherwise it may well be urged that they are taxes on the trade.

sd/- M. I. Setalvad.

Advocate General.

30/7/41.

C. R. to R. D. No. 181-L dated 1-8-1941.

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Office of the R. L. A.

Section 241 of the Government of India Act, 1935, does not require a notification to be issued for the purpose A notification is not therefore strictly necessary. A letter as proposed by H. D. at page 143 ante would be ~~suffi~~ sufficient to delegate to the Chief Jusitce the power of appointment of the Official Assignee and the Deputy Official Assignee. It is also necessary to delegate the power of the Governor to make rules prescribing the conditions of service of those officers. A revised draft letter is sent herewith.

sd/- P. N. M.
8/7

Remembrancer of Legal Affairs.

U. R. to H. D. No. 92-L dated the 9th July 1941.

MMR.
28/4

Office of the R. L. A.

Under regulation 6 of the Bombay and Sindh Public Service Commission (Conditions of Service) Regulations, a Member of the Commissioner including the Chairman holds office for a period of five years. The first proviso to the said regulation 6 lays down that the Governor may extend such period to a furthr period not exceeding five years. The last proviso to the regulation provides that no member shall hold office after he has attained the age of 65 years. The present members of the Commission have been appointed with effect from 1st April 1937 (vide Government Notification, Political and Reforms Department No. R. 293-III (2) dated 2nd April 1937) There is no legal objection to extending the period of office of any or all of the present Members of the Commission to a further period not exceeding five years, after the expiry of their present term of office on 31st March, 1942, but no such member can continue to hold office after he attains the age of 65.

sd/- D.N. M.

Branch Officer of Legal Affairs.

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28/4

The question raised by D.S.G.D. has already been considered by the R. L. A. inhis opinion No. 2750 dated the 24th May 1937. As pointed out inthat opinion, deductions of ten per cent from the amount of refund of octroi tax would in effect amount to imposing a new or additional tax of that amount and after 1st April 1937 the municipality has no power to levy such tax either under entry 49 in the Provincial Legislative List or any other entry inthe said List. However in virtue of the Provisions contained in the Proviso to sub-section (2) of section 73 of theBomaby Municipal Boroughs Act, 1925, it would be open to a municipality which immediately before 1st April 1937 was lawfully levying such tax to continue to levy that tax after that date. ThePoona Municipality which is governed by the Bombay Municipal Boroughs Act was before 1st April 1937 levyingthe aforsaid tax in the form of ten per cent deduction from the amount of refund of octroi tax levied on certain goods and consequently in virtue of the proviso to sub-section (2) of section73 it cancontinue to levy such tax after 1st April 1937. The same view has also been takenby the First Class Sub-Judge, Poona, in his judgment at pp. 10-11 ante.

2. The next question for consideration in this case is whether under the proviso referred to the Municipality can levy the said tax on goods on which no such tax was being levied by it immediately before 1st April 1937 i.e. whether it can make ten per cent deduction from goods levied on articles added to the octroi Schedule after 1st April 1937 which are in transit through or exported from municipal limits. The provisions contained inthe proviso to sub-section (2) of section73 are similar to those contained in section 143(2) of the Government of India Act, 1935. Different interpretations have been at different times put by the Government of India on the provisions of Section 143(2). According to their considered view contained in their letter No. D 1214-F dated the 16th February 1938, the power conferred by section 143(2)

to continue to levy certain taxes, which were being lawfully levied by Provinces or local authorities immediately before 1st April, 1937 includes the power to levy those taxes at lower rates or over a narrower range than the rates or the range obtaining on March 31st 1937 but not at higher rates or over a wider range. The G. O. Circular No. 183 dated 2nd April 1938 referred to by the Municipality is based on the above view of the Government of India. Although the circular does not in terms apply in the case of the tax now under consideration, the principle underlying the circular applied and according to the view taken in the Circular, the Municipality would have no power to levy the tax in respect of the new goods, that is, the goods added to its octroi Schedule after 1st April 1937.

3. But the view taken by the Government of India on which The G. O. Circular has been based differs from their earlier view contained in their letter No. R. Dis. 43-Stamps/36 dated the 28th September 1936 with which the Advocate General has agreed. According to that view it would be open to the Municipality to levy the tax in questionin in respect of the new goods The Government of India had recently an occasion to interpret the proviso to section 154 of the Government of India, Act, 1935, which is similar to the provisions of section 140(2) and in the intergretation of that proviso they seem to have followed the earlier view. In his opinion No.4424 dated the 14th May 1941 the R. L. A. held that although this view was not quite free from doubt, it is in favour of the Province and may therefore be followed until it is held to be wrongly by the Courts. The Municipality may therefore be informed that the question whether it can levy a tax, in the from of ten per cent deduction from octori levied by it, in respect of goods added to the octroi Schedule After 1st April 1937 is not free from doubt and that if it is willing to take the risk it may continue to levy the tax in respect of such goods until its validity is challenged in a Court of law.

sd/- [illegible] N. M.
Remembrancer of Legal Affairs.

MRM.23/4

U. R. to G. D. No. 7148 dated the 13th August 1941.

MRR.
38/4

Office of the R. L. A.

The subject-matter of the Waste Lands(Claims) Act falls under entry 21 in List II and entry 4 in List III in the Seventh Schedule to the Government of India Act, 1935, in as much as the Act provides for a special procedure for the adjudication of claims to waste lands proposed to be sold or otherwise dealt with. Under sub-sections (2) and (3) of section 100 of the Government of India Act the Provincial Legislature has power to make laws with respect to the matters enumerated in Lists II and III in the Seventh Schedule. It will be consequently within the legislative competence of the Provincial Legislature to pass an enactment repealing the Waste Lands(claims) Act in its application to the Province of Bombay.

2. R. D.'s attention is invited to Secretary to H. D. endorsement No. 959/6-IV-R dated the 18th January 1941 under which it is necessary to consult the Government of India before undertaking legislation with respect to any matter in th. Concurrent List.

sd/- P. N. M.

22/10

Remembrancer of Legal Affairs.

U. R. to H. D. 0210 dated the 25th October 1941.

MRR.
29/4.

Office of the R. L. A.

As regards paras. 4 and 5 of D. S., G. D.'s note, attention is invited to R. L. A.'s opinion No. 7148, dated 13th August 1941 in which the position regarding the powers of the Municipalities to levy octroi and make deductions from the amount of refund of octroi has been fully explained.

2. As regrds the question raised in para. 6 of D.S. G. D.'s note, it does not appear that it would be legally possible to set any time-limit for the export of an article and to lay down that no refund of an octroi tax would be granted if an article on which such tax is levied is exported after the time-limit so fixed. It would be open to the person who is required to pay octroi duty on the articles imported within any octroi limits to claim refund after their export from the said limits, if he proves that the articles exported are the same on which octroi duty had been levied on their import. It is immaterial that the articles are exported from the octroi limits on the same day on which they have been imported or at a more distant date.

sd/- P. N. M.
16/10
Remembrancer of Legal Affairs.

sd/- 16/10

U. R. to G. D. No. 9104 dated the 18th October, 1941.

MRR.
28/4.

L. D.
R.I. No. 10132
3/11/1941.

Office of the R. L. A.

The questions raised for the consideration of the R. L. A. are :-

(1) whether the men appointed under the order at page 12 ante can legally be discharged ~~without~~ without notice and without any reason being assigned; and

(2) whether the men appointed under the orders at pages 13-15 ante may be discharge without reason after one month's notice.

2. The services of an Assistant Rural Development Inspector appointed under the order at page 12 ante are purely temporary and liable to be terminated at any time without notice and without any reason being assigned (see para. 4 of the order) The posts of Assistant Rural Development Inspectors could perhaps be classified as posts in one of the "subordinate services" within the meaning of rule 3(f) of the Bombay Civil Services Classification and Recruitment Rules. (cf. para. 2(a) of the Director's Memo at page 21 ante) The Inspectors appointed under the order at page 12 ante would in that event become Government servants within the meaning of rule 5(a) of the Bombay Civil Services (Conduct, Discipline and Appeal) Rules; and those rules would therefore be applicable to them. Under rule 33 of those rules, the penalities of 'removal' or 'dismissal' from the service of the Crown can, for good and sufficient reasons, be imposed upon them. Clause (c) of the Explanation to that rule however provides that the discharge of a person engaged under contract, in accordance with the terms of a contract, does not amount to removal or dismissal within the meaning of rule 33. The effect of para. 4 of the order at page 12 ante appears to be to make the engagement of the candidates "under contract" within the meaning of that clause. Consequently even assuming that those rules apply to such case, it would not be necessary to follow the procedure laid down in rule 55 of the Civil Services (Classification, Control and Appeal) Rule, before passing

before passing an order of

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discharge or removal from the civil service of the Crown. (Cf.para. 2 of R. L.A's opinion No. 7046-Confl. dated 9th August 1941.) It would therefore be lawful for Government to discharge the Inspectors appointed under the order at page 12 without notice and without any reason being assigned.

3. The next question is whether the Insepctors appointed under the orders at pages 13-15 ante can be discharged without reason after one month's notice. The answer to this question appear to be in the negative. The men are appointed as Assistant Rural Development Inspectors in the temporary posts of Kamgars and presumably they are Government servants within the meaning of rule 5(a) of the Bomby Civil Services (conduct, Discipline, and Appeal) Rules and rule 33 will be applicable in their case. The orders of appointment do not specify that the appointments themselves as distinguished from the posts to which they refer are on a temporary basis with or without any provision regardingthe period of notice. These men are appointed presumably for the duration of the temporary posts i.e. till 31st March, 1943(see page 21 ante) Explanation(b) to rule 33 will therefore have no application. It would accordingly be necessary to hold an enquiry under rule 55 of the Civil Services (Classification, Control and Appeal) Rules before dismissing these men from service prior to them automatic termination of the posts held by them.

sd/- P. N. M.
7/11
Remembrancer of Legal Affairs.

sd/-

U. R. to R. D. No. 9633 dated the 7th November 1941.

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Office of the R. L. A.

The question which arises for consideration is whether Mr. Prater if appointed as part-time lecturer and organizer under the Directorate of Information would be considered as holding an office of profit under the Crown. The answer is in the affirmative, particularly in view of the fact that the office is to carry an honorarium of Rs. 500 per month(see R.L.S.'s opinion No. 4261, dated 9th May 1938). Mr. Prater would be holding an office of profit under the Crown within the meaning of section 69(1) (a) of the Government of India Act, 1935, and would consequently be disqualified from continuing as member of the Legislative Assembly.

sd/-P. N. M.

Remembrancer of Legal Affairs.

U. R. to H. D. No. 284-D. confl., dated the 29th October, 1941.

MM.
28/4

R I No.6501
23/7/41.

Office of the R. L. A.

In this case certain land was acquired by the Government of Bombay for the bridging operations of the Royal Bombay Sappers and Miners, Kirkee. The Treasury Officer, Poona, claimed from the Southern Command a sum of Rs. 75/- on account of the cost incurred by the Provincial Government on the establishment of the Special Land Acquisition Officer, Poona, employed for land acquisitions work in the Poona district. The Southern Command does not admit the claim in view of the legal position disclosed in the letter of the Government of India, Finance Department, No. F.((11)-F.40 dated 20th May 1941 as according to him no extra establishment appears to have been established. The question referred by the R. D. for the consideration of the R. L. A. is whether the view taken in the said letter of the Government of India is correct.

2. The view taken by the Government of India in the letter referred to above is that in cases where a Provincial Government is required by the Central Government to acquire land on its behalf under section127 of the Government of India Act, 1935, that Government is liable to reimburse the Provincial Government the amount of compensation paid to the owner of the land and all incidental charges, (e.g. the court costs of expenses, expenses incurred in surveying and marking

out the land, damages paid under section 5 of the Land Acquisition Act, 1894, the travelling expenses of the land acquisition staff and contingencies) but not the cost of the staff which the Provincial Government has to maintain for the purpose of acquisition of the land. The relevant part of section 127 of the Government of India Act provides that the Federation may, if it deems necessary to acquire any land situate in a Province for any purpose connected with a matter with respect of to which the Federal Legislature has poer to make laws, require the Province to acquire the land on behalf and at the expense of the Federation. According to the ordinary meaning of the expression "the expense of the Federation", it would include all expesnes which the Provincial Government has to incur in connection with the acquisition of the acquired on behalf of the Central Government. The cost of the staff employed in the acquistion of any such land whether such staff is the permanent land acquisition staff employed by the Provincial Governments or extra staff specially employed in addition to the ordirnary staff is an expense in connection with the acquisition of the land and such cost is, therefore, in my opinion covered by the expression " the expesne of the Federation" in section 127 of the act. The reasons stated in the

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Government of India letter for excluding such cost do not appear to be sound. It is true that under section 127 of the Government of India Act, it is a statutory duty imposed upon the Province to acquire lands on behalf of the Centre. But the section expressly provides that this duty shall be discharged at the expense of the Federation. The Central Government is, therefore, bound to pay the amount of such expense which any Provincial Government has to incur in the discharge of the statutory duty. It is true that section 124(4) of the Act refers expressly to "extra costs of administration" and that section 127 does not expressly refer to such costs. But it is not clear how an iference can be drawn from this fact that the latter section does not contemplate the payment of such costs. The expression "at the expense of Federation" is much wider in its scope and meaning and would, in my opinion, include the extra costs of administration also. It is also worth noting that the Government of India concedes that expenditure on the travelling expenses of the land acquisition staff and contingencies is to be borne by it. It is not clear why a distinction is sought to be drawn between the other costs of such staff and their travelling allowances. The two stand on the same footing. Consequently the

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view taken in the letter of the Government of India that the Central Government is not liable to pay the Provincial Government anything towards the cost of the staff employed by the latter in the acquisition of any land when required to do so under section 127 of the Government of India Act does not appear to be correct.

3. As, however, the question is not quite free from doubt, the Advocate General is requested to be so good as to give his opinion in the matter.

sd/- P.N.M.
3/9
Remembrancer of Legal Affai

U. R. to Adv. General, Bombay, No. 7857
dated 8th september, 1941.

MRR.
29/4

Compulsory acquisition of land is a matter within the legislative competence of the Province. See Entry 9 in the Provincial Legislative List. As the Executive authority of the Province is co-extensive with its legislative power, the acquisition of land and all matters connected therewith are within the executive authority of the Province. The Province therefore would in the ordinary course have to maintain a staff for the purpose of carrying out this function appertaining to the Province.

2. Section 127 of the Government of India Act provides that the Federation may require the Province., in the circumstances therein mentioned, to acquire land "on behalf, and at the expesne, of the Federation." In other words, the machinery for the purpose being already in existence in the Province, the Federation may require that machinery to be put into operation for its purposes. In that event. if any expesne has to be incurred, such expesne will have to be borne by the Federation. This clearly must refer to any extra cost which may have to be incurred by reason of the acquisition on behalf of the Federation. The Province will not be entitled to charge a portion of the expenses of the establishment which it already maintains for its purposes, to the Federation on the ground that that establishmenthas in part been engaged in connection with acquisition on behalf of the Federation. It has to be remembered that a machinery and the staff are already in existence and that it is the statutory duty of the Province under section 127, to put that machinery into motion for the purpose there mentioned. In the circumstances the cost of the existing machinery could not be said to be an expesne incurred in respect of the acquisition of the land for the Federation. No doubt if any extra staff has to be employed for the purposes, it would be an item of expense which the Province ~~would be~~ would be entitled to charge to the Centre as an item of.

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an item of expense under section 127.

3. I, therefore, take the view that the Government of Bombay are not entitled to claim the sum of Rs.75/-, being a portion of the cost of the permanent land acquisition staff maintained by them, from the Government of India under section 127 of the Government of India Act.

4. The last sentence in paragraph 2 of the letter of the Government of India dated the 20th of May 1941, a copy of which is to be found at page 75 of the File, seems to go further than is justified by the words "the expense of the Federation" in section 127 do not include any extra cost of administration incurred by the Province but that they would include only the amount of compensation paid and other incidental charges in respect of the acquisition. As stated above, if the Province has to employ any extra staff or incur any cost of administration over and above their usual cost by reason of the acquisition on behalf of the Federation such extra cost would, in my opinion, be clearly a part of the expense payable by the Federation under section 127 of the Act.

sd/M. I. Setalvad.

Advocate General
1/10/41

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30/X

Office of the R. L. A.

As the first question raised inthis case whether the legal position disclosed in the letter of the Government of India, Finance Department No. F. 9(11)-F/40 dated 20th May 1941 is correct, was not quite free from doubt, the Advocate General was consulted. A copy of the Statement of the Case prepared for the Advocate General (U.R.to the Advocate General, No. 7857 dated 8th September 1941.) and a copy of his opinion dated 1st October 1941 are sent herewith.

2. As regards the second question whether the Government of Bombay is entitled to advance any claim according to the agreement referred to in the consolidated statement accompanying the letter from the Government of Bombay, Political and Services Department, No. 1809/34-A dated 5th March 1940 it may be stated that item No.9 on page 23 of the consolidated statement accompanying the said letter refers to acquisition of lands for the Federal Government. The remarks in column 6 against this entry in the statement are that the Provincial Government agrees to do this work onthe same terms as heretofore, namely, that when the land is acquired for the Federal Government, the Provincial Government should be reimbursed the cost of extra establishment if, any, is entertained and should be paid the contingent charges. According to this, it appears that the Government of Bombay would be entitled to claim the cost of any establishment employed in the acquisition of any land on behalf of the Central Government only if such establishment is an extra establishment i.e. an establishment specially employed in addition to the establishment otherwise

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employed by the Provincial Government. In this case it does not appear that any extra establishment was employed for the purpose of acquisitionxf of the land required Central Government. (This should be verified by R. D.) It appears from the R. D. letter No. 9260-G/'3 dated 7th January 1941 at page 71 ante, that the claim inthis case is made for use of the ordinary establishment of the Special Land Acquisition Officer, Poona, and the amount of Rs. 75/- is claimed as percentage charge on pro-rata basis . Even if the establishment of the Special Land Acquisition Officer, Poona, is a special establishment employed for land acquisition work in Poona, it cannot be held to be Extra Establishment entertained for the purpose of acquisition of the land for the Central Government. Consequently the Government of Bombay is not entitled to advance any claim on the strength of the agreement referred to above.

sd/-P. N.M.
10/10

Remembrancer of Legal Affairs.

U. R. to R. D. No. 8886, dated 11th October, 1941.

MRR.
30/4.

L.D. R I No. 8394. dated 1/9/41.

OFFICE OF THE R.L.A.

stated that the Currency Office site opposite the Gardens in Bombay which vested in the Government of India ld by it to the New India Assurance co. Ltd. sed to levy assessment onthe site from the date the land the New Indian Assurance Co. No conveyance deed has ecuted between the Government of India and the New India co. The question for the consideration of the R.L. ier assessment can be lovied by the Government n the site and if so, from what date?

section 154 of the Government of India Act any property the Central Government is exempt from taxation by the Government. When any property so vested is transferred party so that it ceases to vest in the Central Government tion conferrred under section 154 no longer continues and ty is liable to taxation by the Provincial Government. nthis case would therefore be liable to assessment from ate it was sold to the New India Assurance co.

onfn for consideration therefore is whether as no ce deed has yet been executed, it can be held that been a sale of the site by the Central Government to the New India Assurance Co. The correspondence at pages 49to 51 ante does not constitute a sale. At the most, it would amount to a contract of sale. (cf. section 54 of the Transfer of Prorerty Act and R.L.A's opinion No. 130-P Confl. dated 30th July 1941). Under section 54 of the Transfer of Property Act, 1882, a sale of tangible immoveable property of the value of one hundred rupees and upwards can be made only by a registered instrument. But under section 2 of the Crown Grants Act, 1895, the Transfer of Property Act is not applicable

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to such transactions entered into by the Crown. Section 175(3) of the Government of India Act, 1935, however, provides that all contracts made in the exercise of the executive authority of the Federal Government shall be expressed tobe made by the Governor General and that all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the Governor General by such persons andin such manner as he may direct. Attention is also invited to Accountant General's letter dated 17th June 1937(page 51) to the New India Insurance Company in which it is stated that the Company's offer was accepted subject to their completing the requisite documents to Government of India's satsifaction. In view of these facts, it appears doubtful whether it can be held that there has been a legal transfer of the site by the Central Government in favour of the Insurance Company. In this view,it does not appear that the Government of Bombay can levy assessment on the site till such a deed is executed.

3. Assuming that the sale in this case is complete, it does not appear that by its letter dated 7th December 1937 at page 53 ante any guarantee was given by this Government that lands disposed of by the Central Government prior to 1st January 1938 would not be assessed In paragraph 2 of the letter it is stated that the Bombay Government accordingly proposes to assess in the first instance all land transferred to third parties on or after 1st January 1938 to an assessment calculated at 2½ per cent of the market value of the land. The letter is silent about assessment on lands transferred before 1st January 1938. Further more, it appears from the correspondence between this Government and the Central Government referrred to in para 5 of the R. D. office note, that the arrangement proposed by this Government in its letter dated 7th December1937 has not yet been accepted by the Central Government. For these reasons, in the

Government of ~~Bombay~~ Bombay is not precluded from levying the assessment in this case.

sd/- P.N.M.
18/10

Remembrancer of Legal Affairs.

sd/-
18/10

U.R. to R.D. No. 9114, dated the 22nd October, 1941.

MMR.
20/4.

Office of the R. L. A

Attention of the Revenue Department is invited to R.L.A 's opinion No. 0114 dated 22nd October 1941. In view of the legal position stated in R.L.A.'s opinion it would be open to the Government of Bombay to levy assessment in this case. There is no legal objection to the course suggested in para. 3 of R. D. Note dated 25th August 1941.

sd/- P.N.M.
4/11
Remembrancer of Legal Affairs.
sd/- 4/11

U.R. to R.D. No. 9609 Dated the 7th October 1941.

MMR.
30/4

Office of the R.L.A.

Under section 124(1) of the Government of India Act notwithstanding anything in the Act the Governor General may, with the consent of the Government of a Province entrust either conditionally or unconditionally to that Government or ot its officers functions in relation to any matter to which the executive authority of the Federation extends. Under Section 8(1) of the Act, the executive authority of the Federation extends to the matters with respect to which the Federal Legislature has power to make laws. Under section 100(2) of the Act the Federal Legislature has power to make laws with respect to any of the matters enumerated in the Concurrent Legislative List. It is true that in virtue of these provisions, which are referred to by the Deputy Secretary, Political and Services Department, in his note dated the 9th October 1941, the executive authority of the Federation would extend to matters mentioned in the Concurrent Legislative List, but under the Proviso(i) to section 8th said authority would not extend in any Province to matters with respect to which the Provincial Legislature has power to make laws. Under section 100(2) of the Act referred to the Provincial Legislature has also power to make laws with respect to any of the matters enumerated in the Concurrent Legislative and that being the position, under the proviso(i) to section 8 the executive authority of the Federation would not extend in a Province to matters enumerated in the Concurrent Legislative List. There can, therefore, be no question of the entrustment of functions under section 124(1) of the Act, in regard to matters enumerated in the Concurrent Legislative List. The Inland Steam Vessels Act also confers all the necessary powers on the Provincial Government. No powers or functions are reserved to the Central Government under the Act and there can therefore be no question of delegating those powers or entrusting

those functions to the Provincial Government. The view taken by the Government of India appears to be correct.

sd/- P.N.M.
Remembrancer of Legal Affairs.

U.R.to P. & S.D. No. 10487, dated the 6th December, 1941.

MRR.
30/4.

L. D. R.I No. 6855/27/7/41.

The question for R.L.A's considerati.. is whether regulations 10 of the draft regulations under section 2 of the Epidemic Diseases Act, 1897, can be amended so as to provide for the removal of passengers found suffering from Cholera on railways to the Isolation wards mentioned in Schedule A to th said, regulations. In other words, whether the Provincial Government can under section 2 of the Epidemic Diseases Act, 1897, compel the G.I.P. Railway, which is a Federal Railway to permit the use of railway Isolation wards at certain stations for accommodating persons suffering from infectious diseases.

2. Sub-section (1) of section 2 of the Epidemic Disease Act, 1897, empowers the Provincial Government to require any persons to take such measures and prescribe such temporary regulations to be observed by the Public or by any person or class of persons as it shall deem necessary to prevent the outbreak of any dangerous epidemic disease. Sub-section (2) of the said section gives power to the Government to make regulations for the inspection of persons travelling by railway or otherwise .

MMR.

30/4-

and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.

These provisions apply to all persons within the Province and they would therefore apply to the Railways also. The Indian Railways Act, 1890, does not contain any provisions which exempt the Railways from the obligation to obey the Epidemic Diseases Act or any Special provisions for the accommodation of persons suffering from infectious diseases and therefore the question of the provisions of the former Act prevailing over those of the latter Act does not arise. It would consequently be open to the Provincial Government under section 2 of the Epidemic Diseases Act to direct the G.I.P. Railway to isolate and provide suitable accommodation for persons travelling by railway and suffering from any epidemic disease, but under that section it will not be possible to ask the Railway to allot any particular Isolation wards or hospitals in its possession for the use of such persons. The amendment proposed by the Director of Public Health to regulation 10 at page 16 ante will not, therefore, be in order

3. The Advocate General is

MMM.
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requested to state whether he agrees with the above view.

sd/-P.N.M.

Remembrancer of Legal Affairs.

U.O. to the Advocate General Bombay,

No. 7297, dated 19/8/1941.

MRR.
30/4.

I agree with the view expressed by the R.L.A. in paragraph 2 of his Note.

2. The power to prescribe regulations for the inspection of persons travelling by railway or otherwise, and the segregation in hospital, temporary accomodation or otherwise, of persons suspected by the Inspecting Officer of being infected with any such disease under section 3(2) (b) of the Act would not include a power to make a regulation making it obligatory on a railway authority or a private individual, to allot any particular building, hospital or isolated ward, in its or his possession or occupation for the use of such infected persons.

sd/- M.I. Setalvad.
Advocate General
26/9/41.

MRR.
30/4.

Office of the R.L.A.

The Advocate General was consulted in this case. A copy of his opinion together with a copy of R.L.A's opinion in the case is forwarded to the General Department.

sd/- P.N.M.
3/10.
Remembrancer of Legal Affairs.

U.R. to G.D. No. 8717, dated the 6th October, 1941.

MRR.
30/4/1956.

L.D. R I. No. 8456.
1/9/1941.

The question for H.L.A's consideration is whether it is obligatory on Government to make rules prescribing conditions of service in respect of a post before an appointment is made to it 2. The answer to the question is in the negative. Clause (b) of sub-section(1) of section 241 of the Government of India Act, 1935, gives power to the Governor or to such person as he may direct to make appointments to the civil services of a Province and civil posts in connection with the affairs of a Province. Clause (b) of sub-section (2) of the said section provides that except as expressly provided by the Act the conditions of service of persons serving in connection with the affairs of a Province shall be such as may be prescribed by rules made by the Governor of a Province or by some person or persons authorised by the Governor to make rules for the purpose. The proviso to sub-section(2) of section 241 provides that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their employment may be terminated on one month's notice or less. It is true that under those provisions it will be necessary to make rules regulating the conditions of service of persons other than those employed temporarily on the terms that their employment may be terminated on one month's notice or less, but it does not follow from these provisions that the power given by clause (b) of sub-section (1) of section 241 to make appointments is held in abeyance till the rules are made. Had the intention been that no appointments should be made to any posts till the rules governing those posts are made, an express provision to that effect would have been made in the Act. The view taken by the Deputy Secretary, P & S.D. that Government is not legally incompetent to make an appointment to a post until recruitment rules are made is, therefore, correct.

p.t.o.....

sd/- F.N.H.

11/9

Remembrancer of Legal Affairs.

U.R.to G.D.No. 8026 dated 13th September, 1941.

30/4/56